

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.**

COMPANY APPLICATION NO.701 OF 2004
IN
COMPANY PETITION NO.303 OF 2001

Jayabharat Credit Ltd. ...Applicant.
Vs.
Official Liquidator of Print-O-Graph
Pvt.Ltd. (In Liqn.P ...Respondent.

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Mr. Manoj Dalvi i/b. Banatwala & Co. for the Applicant.
Mrs. K.V. Gautam, Dy.Official Liquidator present.

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CORAM :DR.D.Y.CHANDRACHUD, J.
April 18, 2007.

P.C.:

M/s.Jayabharat Credit Ltd. which is a finance Company engaged in the business of hire purchase and leasing of machinery and equipment, has moved the present proceedings seeking the following reliefs:

“(a) That the Hon'ble Court be pleased to direct the Respondent to release and hand over the possession of the Equipment and machinery more particularly described in Ex.A appended to affidavit in support or in the alternative the Respondents be directed to sell the same by private treaty or public auction and the sale proceeds be handed over to the Applicants.”

The applicant had instituted a Company Petition for winding up on the strength of dues which it claimed were outstanding under a hire purchase agreement entered into on 1st February 1995 with the Company. Consent Terms were arrived at between the Company and the Applicant, in pursuance of which an order dated 18th April 2001 was passed by the Court. The order of the Court provided a self operative consequence of admission in the event of a default in the payment of installments. Upon a default as envisaged in the Consent Terms, a Provisional Liquidator was appointed on 26th September 2001. The Liquidator took charge and possession of the premises, plant and machinery on 28th January 2003.

When the present Company Application was taken out, an order was passed by a Learned Single Judge on 7th July 2005, directing the Official Liquidator to appoint a valuer so as to identify the equipment and machinery claimed by the Applicant. The report of the valuer was received and an inventory was carried out. On 30th September 2005, the Company Application was permitted to be amended so as to implead Development Co-operative Bank

Ltd. since the Bank claimed as a secured creditor. The Bank has accordingly been impleaded to the proceedings. Counsel appearing on behalf of the Applicant states that the application has been served on the Development Co-operative Bank.

The valuer appointed by the Liquidator has carried out and prepared an inventory of the leased equipment which belong to the Applicant. A copy of the report has been annexed to the reply filed by the Liquidator. The Official Liquidator has stated in his reply that he has no objection to handing over possession of the equipment and the machinery as identified by the valuer to the Applicant subject to the consent of Development Co-operative Bank. The Liquidator has stated that the Bank may be directed to remain present at the time when actual delivery of the leased equipment and machinery is given. The agreement of Hire Purchase at Exh.A to the Company Application recognises that the Applicant is the absolute owner of the machinery and equipment identified in the first schedule thereto. The Development Co-operative Bank has not remained present either when the inventory was taken or at the hearing of the present application. A perusal of the agreement of hire purchase would show that the title to the

leased equipment and machinery vests in the Applicant. In the circumstances, there can be no objection to granting reliefs as prayed in prayer clause (a) of the Company Application. The Liquidator has stated in para 10 of the reply that the Applicant and the Development Co-operative Bank should be called upon to deposit the outstanding security charges of Rs.4,20,960/-. In so far as this aspect is concerned, the attention of the Court has been drawn to an order dated 26th June 2003 passed by D.G. Karnik, J. under which a specific direction was issued that the secured creditor should pay the past security charges. The liability is not of the applicant.

In the circumstances, the Company Application is disposed of by directing the Liquidator to release and hand over possession of the equipment and machinery forming the subject matter of the hire purchase agreement at Exh.A to the Company Application and as identified in the report of the valuer. However, it would be appropriate to direct that before doing so, the Official Liquidator shall furnish a notice of at least two clear weeks to the Development Co-operative Bank of the proposed date on which possession will be handed over to the Applicant in terms of this order. The Company Application is accordingly disposed of.

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